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<b>Attorney Docket Number</b>	453.1	
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<b>Printed name</b>	James Scott Anderson (Applicant)		
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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/663,498  
Applicant / Appellant : Anderson, James Scott  
Filing Date : September 16, 2003  
Title : ERASABLE TRAY LABELS  
Art Unit : 3611  
Examiner : Silbermann, Joanne  
Confirmation No. : 2443  
Docket No. : 453.1

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**APPEAL BRIEF**

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This Appeal Brief in the above-identified application is filed pursuant to the “Notice of Appeal” filed on February 15, 2007.

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(i) REAL PARTY IN INTEREST

The real party in interest in this appeal is the Applicant and Inventor, James Scott Anderson.

(ii) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences involving this application or its subject matter.

(iii) STATUS OF CLAIMS

Claims 1-28 were submitted with the application, filed September 16, 2003.

Claims 3, 8, 9, 18, and 19 were canceled in the "Amendment and Response to First Office Action" filed April 8, 2005.

New claims 29-33 were submitted in an "Amendment and Response to Final Office Action" filed December 27, 2005; and later withdrawn as being directed to a non-elected invention.

New claims 34-51 were submitted in an "Amendment and Response to Office Action" filed September 2, 2006.

Claims 1, 2, 4-7, 10-17, and 20-51 are pending in the application. Claims 29-33 stand withdrawn.

Claims 1, 2, 4-7, 10-17, 20-28, and 34-51 stand finally rejected.

Claims 1, 10-13, 16, 23-26, 34-38, 40-47, and 49-51 are the subject of this appeal.

(iv) STATUS OF AMENDMENTS

No amendments were filed after the final rejection.

(v) SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claims 1 and 16:

Independent claim 1 relates to a label assembly comprising “a generally planar writing surface” and a “semi-rigid core supporting said writing surface.” (Claim 1; Abstract; Fig. 1; Specification at ¶¶ [0013], [0039]). The core defines “a slot positioned and sized to releasably receive an edge of a generally planar wall of an open container.” (Claim 1; Abstract; Fig. 2; ¶ [0068]).

Independent claim 16 relates to a “method of releasably mounting an erasable label across an edge of a generally planar wall of an open container,” the method comprising “providing a generally planar writing surface . . . mounting said writing surface to a semi-rigid core; and forming a slot within said core.” (Claim 16; Abstract; Figs. 1-2; Specification at ¶¶ [0013], [0039], [0068]).

Independent Claims 34 and 43:

Independent claim 34 relates to a label assembly comprising “a generally planar writing surface” and a “semi-rigid core supporting said writing surface.” (Claim 34; Abstract; Fig. 1; ¶¶ [0013], [0039]). The core defines “a slot . . . extending upward from said bottom side to a depth terminating near said lower boundary of said writing surface.” (Claim 34; Abstract; Fig. 2; ¶ [0068]).

Independent claim 43 relates to a “method of assembling a label,” the method comprising “providing a generally planar writing surface . . . mounting said writing surface to a semi-rigid core . . . and forming a slot [] extending upward from said bottom side to a depth terminating

near said lower boundary of said writing surface.” (Claim 43; Abstract; Figs. 1-2; ¶¶ [0013], [0039], [0068]).



(vi) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- I. WHETHER CLAIMS 1, 10-13, 16, AND 23-26 ARE UNPATENTABLE UNDER 37 C.F.R. § 103(a) AS BEING OBVIOUS IN LIGHT OF *DOWNING* ALONE. (U.S. PATENT 6,604,789).
  
- II. WHETHER CLAIMS 34-38, 40-47, AND 49-51 ARE UNPATENTABLE UNDER 37 C.F.R. § 103(a) AS BEING OBVIOUS IN LIGHT OF *WELLER* (U.S. PATENT 3,526,050), IN VIEW OF *SCHMEIDA* (U.S. PATENT 5,727,818).

(vii) ARGUMENT

I. WHETHER CLAIMS 1, 10-13, 16, AND 23-26 ARE UNPATENTABLE UNDER 37 C.F.R. § 103(a) AS BEING OBVIOUS IN LIGHT OF *DOWNING* ALONE. (U.S. PATENT 6,604,789).

Because *Downing* does not teach or suggest all the features of the claimed invention, and because this obviousness rejection is based on *Downing* alone, the Examiner has not set forth a *prima facie* case of obviousness. Accordingly, the Board should reverse the rejection and direct the Examiner to withdraw it.

*Downing* does not teach or suggest all the features of the claimed invention. A *prima facie* case of obviousness requires that the cited prior art reference[s] teach or suggest all the features of the claimed invention. MPEP § 2142; *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). “The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of non-obviousness.” MPEP § 2142; *In re Geiger*, 815 F.2d 686, 690 (Fed. Cir. 1987). Because *Downing* alone does not teach or suggest all the features of the claimed invention, the rejection does not satisfy the Examiner’s initial burden of stating a *prima facie* case of obviousness.

A. Independent Claim 1.

*Downing* does not teach or suggest all the features of independent claim 1. For example, *Downing* does not teach or suggest a label assembly comprising a writing surface. The words “writing surface” appear nowhere in the *Downing* reference. *Downing* discloses a detachable cushion for the armrest of a chair. (*Downing*, Abstract). Nothing in *Downing* teaches or

suggests a writing surface of any kind, anywhere on the structure. *Downing* is not combined with any other reference to support the rejection of claim 1.

In response to this argument, raised previously, the Examiner stated in the Final Office Action: “The examiner realizes that these exact words [“writing surface”] are not used, however *Downing* teaches a surface having indicia thereon. Giving the claims their broadest, reasonable interpretation, *any surface that can be written on is a writing surface.*” (Final Office Action at p. 7, ¶ 28) (italics added).

The Applicant is not claiming *any surface*. Claim 1 does not recite *any surface*. Claim 1 recites “a generally planar writing surface for receiving temporary and permanent indicia” together with other features.

If the Examiner’s position (“*any surface that can be written on is a writing surface*”) is allowed to stand as correct, then any issued patent – disclosing any kind of apparatus having a physical surface – would be sufficient (by itself) to make Claim 1 obvious. Such a result would not make sense. The rejection is not supported by sufficient evidence of obviousness and it should be withdrawn.

B. Dependent Claims 10-13.

*Downing* does not teach or suggest all the features recited in dependent claims 10-13, which depend from independent claim 1. As explained above, for example, *Downing* does not teach or suggest a writing surface.

*Downing* alone does not teach or suggest all the features of claim 10, such as the “front writing surface” and generally opposing “rear writing surface.” *Downing* does not teach or suggest a single writing surface, or two writing surfaces.

*Downing* does not teach or suggest all the features of claim 11, such as “said core further [defining] a second slot.” *Downing* does not teach or suggest any core or slot feature.

*Downing* does not teach or suggest all the features of claim 12, such as the “area of said writing surface [bearing] permanent indicia.” *Downing* does not teach or suggest any writing surface of any type.

*Downing* does not teach or suggest all the features of claim 13, such as the “portion of said writing surface . . . for removable receiving water-soluble indicia.” *Downing* does not teach or suggest any writing surface of any type.

The features recited in these dependent claims are patentable over *Downing*.

C. Independent Method Claim 16.

*Downing* does not teach or suggest all the features of independent method claim 16. For example, *Downing* does not teach or suggest the step of “providing a generally planar writing surface.” As explained above, nothing in *Downing* teaches or suggests a writing surface of any kind. Because *Downing* alone does not teach or suggest all the features of the claimed invention in claim 16, the rejection does not state a *prima facie* case of obviousness and it should be withdrawn.

D. Dependent Method Claims 23-26.

*Downing* does not teach or suggest all the features recited in dependent method claims 23-26, which depend from independent claim 16. As explained above, for example, *Downing* does not teach or suggest a writing surface.

*Downing* alone does not teach or suggest all the features of claim 23, such as the step of “providing a second writing surface.” *Downing* does not teach or suggest a single writing surface, or two writing surfaces.

*Downing* does not teach or suggest all the features of claim 24, such as the step of “forming a second slot within said core.” *Downing* does not teach or suggest any core or slot feature.

*Downing* does not teach or suggest all the features of claim 25, such as the step of “printing permanent indicia upon an area of said writing surface.” *Downing* does not teach or suggest any writing surface of any type.

*Downing* does not teach or suggest all the features of claim 26, such as the step of “providing a vinyl-coated writing surface . . . for removably receiving water-soluble indicia.” *Downing* does not teach or suggest any writing surface of any type.

The features recited in these dependent claims are patentable over *Downing*.

In conclusion, because *Downing* alone does not teach or suggest all the features of the claimed invention, the rejection does not satisfy the Examiner’s initial burden of stating a *prima facie* case of obviousness. Accordingly, the Board should reverse the rejection and direct the Examiner to withdraw it.

II. WHETHER CLAIMS 34-38, 40-47, AND 49-51 ARE UNPATENTABLE UNDER 37 C.F.R. § 103(a) AS BEING OBVIOUS IN LIGHT OF *WELLER* (U.S. PATENT 3,526,050), IN VIEW OF *SCHMEIDA* (U.S. PATENT 5,727,818).

*Weller* in view of *Schmeida* does not teach or suggest all the features of the claimed invention. A *prima facie* case of obviousness requires that the cited prior art references teach or suggest all the features of the claimed invention. MPEP § 2142; *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991); *In re Geiger*, 815 F.2d 686, 690 (Fed. Cir. 1987). Because *Weller* in view of *Schmeida* does not teach or suggest all the features of the claimed invention, the rejection does not satisfy the Examiner's initial burden of stating a *prima facie* case of obviousness. Accordingly, the Board should reverse the rejection and direct the Examiner to withdraw it.

A. Independent Claim 34; Dependent Claims 35-38, 40-42.

*Weller* in view of *Schmeida* does not teach or suggest all the features of independent claim 34 and its dependent claims. *Weller* discloses a medallion for an automobile radio antenna. (*Weller*, at col.1, lines 12-13). *Schmeida* discloses a dry-erase label for computer diskettes. (*Schmeida*, Abstract).

First, neither *Weller* nor *Schmeida* teach or suggest a semi-rigid core, as claimed. *Weller* discloses a one-piece molded plastic medallion having no core element. (*Weller*, at col. 4, lines 16-24). The disclosed medallion 42 has a thickness, (see Fig. 9,) but has no separate core element. *Schmeida* discloses a standard adhesive, opaque label; also having no core element. (*Schmeida*, at col. 4, lines 62-65). The semi-rigid core in claim 34 is not taught or suggested by *Weller* or *Schmeida*. Because both references lack a core element, the combination cannot possibly teach or suggest the semi-rigid core in claim 34.

Second, neither *Weller* nor *Schmeida* teach or suggest a “slot extending upward from said bottom side [of said core] to a depth terminating near said lower boundary of said writing surface,” as set forth in claim 34. The slot in claim 34 is defined by the semi-rigid core – a feature not present in either *Weller* or *Schmeida*. Without the teaching or suggestion of a core element, there can be no teaching or suggestion of a slot element within such a core.

Moreover, the slot as recited in claim 34 is not taught or suggested by either *Weller* or *Schmeida*. *Schmeida* discloses an adhesive label, with no core or slot. (*Schmeida*, at col. 4, lines 62-65). In *Weller*, the medallion 10 is molded with a “blind hole or recess 16” for receiving the free end of a radio antenna. (*Weller*, at col. 2, lines 39-45; Fig. 1). *Weller* discloses a series of round pins 49 used to form the blind holes 16 that are cylindrical. (*Weller*, at Fig. 10; col. 4, lines 39-45). The disclosure in *Weller* teaches or suggests only a generally cylindrical “blind hole or recess 16” for receiving a radio antenna. Nothing in *Weller* teaches or suggests a slot as recited in claim 34. A slot, by definition, is not cylindrical. A slot is defined a “long and narrow opening or groove.” *Webster’s Third New International Dictionary, Unabridged* (Merriam-Webster, 2002). *Weller* discloses a simple hole, and teaches nothing about a slot.

B. Independent Method Claim 43; Dependent Method Claims 44-47, 49-51.

*Weller* in view of *Schmeida* does not teach or suggest all the features of independent method claim 43 and its dependent claims.

First, neither *Weller* nor *Schmeida* teach or suggest the step of “mounting said writing surface to a semi-rigid core,” as claimed. *Weller* discloses a one-piece molded plastic medallion having no writing surface and no core element. (*Weller*, at col. 4, lines 16-24; Fig. 9). *Schmeida* discloses an adhesive label; also having no core element. (*Schmeida*, at col. 4, lines 62-65).

Because there is no core element disclosed in either reference, there can be no teaching or suggestion of the step of “mounting said writing surface to a semi-rigid core” as recited in claim 43.

Second, neither *Weller* nor *Schmeida* teach or suggest the step of “forming a slot within said thickness [of said core],” as set forth in claim 43. The slot in claim 43 is formed within the semi-rigid core – a feature not present in either *Weller* or *Schmeida*. Without the teaching or suggestion of a core element, there can be no teaching or suggestion of the step of “forming a slot within said thickness [of said core].”

Moreover, the step of forming a slot as recited in claim 43 is not taught or suggested by either *Weller* or *Schmeida*. *Schmeida* does not disclose any core element and, therefore, cannot disclose a method of forming a slot within a core. The disclosure in *Weller* teaches or suggests only the use of a series of round pins 49 for making blind holes 16 for receiving a radio antenna. (*Weller*, at Fig. 10; col. 4, lines 39-45). Because round pins 49 make round holes 16, there is nothing in *Weller* that teaches or suggests the forming of a slot as recited in claim 43.

In conclusion, because neither *Weller* nor *Schmeida*, nor any combination therefore, teaches or suggests all the features of the claimed invention, the rejection does not satisfy the Examiner’s initial burden of stating a *prima facie* case of obviousness. Accordingly, the Board should reverse the rejection and direct the Examiner to withdraw it.



(viii) CLAIMS APPENDIX

1. A label assembly comprising:  
a generally planar writing surface for receiving temporary and permanent indicia;  
and  
a semi-rigid core supporting said writing surface, said core defining a slot  
positioned and sized to releasably receive an edge of a generally planar wall of an open container  
such that a majority of said writing surface extends beyond said edge when said edge is received  
within said slot, and wherein the orientation of said slot is generally parallel to said writing  
surface.

10. The label assembly of claim 1, wherein said writing surface comprises a front  
writing surface facing a first direction and a rear writing surface facing a second direction  
generally opposing said first direction.

11. The label assembly of claim 1, wherein said core further defines a second slot,  
distinct from said slot, said second slot also positioned and sized to releasably receive said edge  
such that a majority of said writing surface extends beyond said edge when said edge is received  
within said slot, and wherein the orientation of said slot is generally parallel to said writing  
surface.

12. The label assembly of claim 1, wherein an area of said writing surface bears permanent indicia.

13. The label assembly of claim 1, wherein at least a portion of said writing surface includes a vinyl-coated writing surface for removably receiving water-soluble indicia.

16. A method of releasably mounting an erasable label across an edge of a generally planar wall of an open container, said method comprising:

providing a generally planar writing surface to receive said label, said writing surface suitable for receiving temporary and permanent indicia;

mounting said writing surface to a semi-rigid core; and

forming a slot within said core, said slot positioned and sized to releasably receive said edge such that a majority of said writing surface extends beyond said edge when said edge is received within said slot, and wherein the orientation of said slot is generally parallel to said writing surface.

23. The method of claim 16, further comprising:

providing a second writing surface facing a direction generally opposing that of said writing surface.

24. The method of claim 16, further comprising:

forming a second slot within said core, distinct from said slot, said second slot also positioned and sized to releasably receive said edge such that a majority of said writing surface extends beyond said edge when said edge is received within said slot, and wherein the orientation of said slot is generally parallel to said writing surface.

25. The method of claim 16, further comprising:

printing permanent indicia upon an area of said writing surface.

26. The method of claim 16, wherein said step of providing a writing surface further comprises:

providing a vinyl-coated writing surface to receive said label, said coated writing surface suitable for removably receiving water-soluble indicia.

34. A label assembly comprising:  
a generally planar writing surface for receiving temporary and permanent indicia;  
and  
a semi-rigid core supporting said writing surface, said core having a thickness and generally opposing top and bottom sides, said writing surface extending from near said top side to a lower boundary,  
wherein said core defines a slot within said thickness, said slot extending upward from said bottom side to a depth terminating near said lower boundary of said writing surface such that a majority of said writing surface extends beyond and generally above said slot.

35. The label assembly of claim 34, wherein said writing surface comprises:  
a front writing surface facing a first direction; and  
a rear writing surface facing a second direction generally opposing said first direction.

36. The label assembly of claim 34, wherein at least a portion of said writing surface includes a whiteboard for removably receiving dry-erase indicia.

37. The label assembly of claim 34, wherein at least a portion of said writing surface bears permanent indicia.

38. The label assembly of claim 34, wherein at least a portion of said writing surface includes a vinyl-coated writing surface for removably receiving water-soluble indicia.

40. The label assembly of claim 34, further comprising a generally transparent film releasably adhered to at least a portion of said writing surface.

41. The label assembly of claim 34, wherein said slot is positioned and sized to releasably receive an edge of a generally planar wall of an open container, such that a majority of said writing surface extends beyond said edge when said edge is received within said slot to said depth.

42. The label assembly of claim 41, wherein said core further defines a second slot within said thickness, distinct from said slot, said second slot also positioned and sized to releasably receive said edge such that a majority of said writing surface extends beyond said edge when said edge is received within said slot to said depth.

43. A method of assembling a label, comprising:

providing a generally planar writing surface suitable for receiving temporary and permanent indicia;

mounting said writing surface to a semi-rigid core, said core having a thickness and generally opposing top and bottom sides, such that said writing surface extends from near said top side to a lower boundary; and

forming a slot within said thickness, said slot extending upward from said bottom side to a depth terminating near said lower boundary of said writing surface such that a majority of said writing surface extends beyond and generally above said slot.

44. The method of claim 43, further comprising:

providing a rear writing surface facing a direction generally opposing that of said writing surface.

45. The method of claim 43, wherein said step of a providing a writing surface further comprises:

providing a whiteboard on at least a portion of said writing surface for removably receiving dry-erase indicia.

46. The method of claim 43, further comprising:

printing permanent indicia on at least a portion of said writing surface.

47. The method of claim 43, wherein said step of a providing a writing surface further comprises:

providing a vinyl-coated writing surface on at least a portion of said writing surface for removably receiving water-soluble indicia.

49. The method of claim 43, further comprising:

providing a releasably adhesive and generally transparent film sized and shaped to be placed upon at least a portion of said writing surface.

50. The method of claim 43, wherein said step of forming a slot further comprises:

positioning and sizing said slot to releasably receive an edge of a generally planar wall of an open container, such that a majority of said writing surface extends beyond said edge when said edge is received within said slot to said depth.

51. The method of claim 50, further comprising:

forming a second slot within said thickness, distinct from said slot; and  
positioning and sizing said second slot to releasably receive said edge such that a majority of said writing surface extends beyond said edge when said edge is received within said slot to said depth.



(ix) EVIDENCE APPENDIX

None.

**(x) RELATED PROCEEDINGS APPENDIX**


None.

### CONCLUSION

The Applicant is available at (404) 245-5718 to answer any questions or requests that may be resolved by telephone in order to expedite this Appeal.

The Applicant submits herewith a Transmittal Form and the required fee for filing this Appeal Brief. The Applicant does not believe any requests for extension of time or other fees are required, beyond those accompanying this paper. If additional requests or extensions are necessary to allow consideration of this paper, such extensions are hereby petitioned-for under 37 C.F.R. § 1.136(a).

Respectfully submitted,



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J. Scott Anderson